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December 17, 1999

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Fort Mojave Telecommunications, Inc.
San Carlos Apache Telecommunications Utility, Inc.
DA 99-259 released February 11, 1999; and

Gila River Telecommunications, Inc.
Tohono O'odham Utility Authority
DA 99-399 released February 26, 1999.

Petitions for Waiver of Section 54.403(a)
of the Commission's Rules

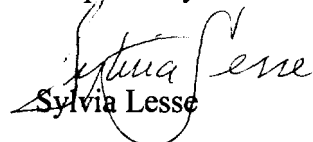
Ex Parte Presentation

Dear Ms. Salas:

Attached hereto is a copy of Comments of Gila River Telecommunications, Inc. filed this date in CC Docket No. 96-45. The Comments discuss the proceedings referenced above.

Please refer any questions or correspondence concerning this matter to the undersigned.

Respectfully submitted,


Sylvia Lesse

cc: Jill Canfield, NTCA

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 2054

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In the Matter of)
)
Federal-State Joint Board on)
Universal Service:)
Promoting Deployment and)
Subscribership in Unserved)
and Underserved Areas, Including)
Tribal and Insular Areas)

CC Docket No. 96-45

To: The Commission

COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

Gila River Telecommunications, Inc. ("GRTI"), in response to the Commission's Notice of Proposed Rulemaking in the captioned proceeding,¹ hereby submits its comments. GRTI is a tribal-owned entity, created for the specific purpose and duly authorized by the Gila River Tribal Council to provide telecommunications and other basic utility services within tribal lands located in Arizona.

GRTI commends the Commission for its initiative in addressing the unique issues affecting the availability of universal service in tribal areas, and its recognition of the special relationship which exists between the federal government and Indian tribes. In addition, GRTI

¹ In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, released September 3, 1999 ("NPRM"). GRTI also submitted comments in the Commission's companion *Notice of Proposed Rulemaking*, In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, released August 18, 1999.

appreciates the efforts of the Commissioners and staff in arranging site visits to Indian reservations and tribally-owned telephone companies.

The *NPRM* raises for comment several critical issues involving the deployment of telecommunications facilities and subscribership levels on tribal lands. These issues can be resolved only within a decision-making framework that recognizes the following principles: (i) competition in telecommunications, without tribal sanction, on tribal lands where a tribal-owned carrier has been designated to provide service may thwart the advancement of universal service goals and harm rather than bolster the Indian nation economy; and (ii) appropriate deference to tribal sovereignty and self-determination require that tribal authorities be involved in determinations regarding entry of additional non-tribal competitors in tribal lands.

I. Universal Service Goals May Not Be Served If Tribal Carriers Are Forced To Compete for Universal Service Funding on Tribal Lands.

USF draws are a significant element in cost recovery for rural telephone companies, including tribal-owned telecommunications companies like GRTI. Universal service funding enables carriers to provide service at reasonable rates despite the high cost of providing telephone service in remote, sparsely-populated areas. The pooling mechanism established by the FCC in 1984, administered by the National Exchange Carrier Association, Inc. ("NECA") also assists in the process of cost recovery for rural carriers.

GRTI has demonstrated its commitment to providing state-of-the-art telecommunications services to the Native American customers that it serves.² Continued fulfillment of this

² See e.g., Testimony of Governor Mary Thomas, Gila River Indian Community, submitted in Second Public Hearing in Series on Telephone Service for Indians on Reservations;

commitment requires consistency in rational rate design, including the adequacy of non-subscriber cost recovery mechanisms. GRTI recognizes that, in many areas, competition in telecommunications through the designation of additional ETCs may serve the public interest by promoting the choice among service providers, thereby lowering the cost of service.

In rural areas, however, the factors which guide public policy decisions regarding competition among carriers for universal service funding, as opposed to competition for customers, are, as Congress recognized,³ distinctive. Contrary to the general model, competition for USF funding in rural tribal lands where a tribal carrier has been designated and appointed will, in some circumstances, have a profound adverse effect on universal service.

In GRTI's service area, for example, GRTI has deployed network sufficient to serve the entire Gila River Reservation; the only remaining impediments to universal service are the inability of low-income Native Americans residing on Gila River's tribal lands to afford basic telephone service,⁴ and adequate funding for GRTI to continue providing and improving service.

Set for March 23 in Chandler, Arizona, *Public Notice*, BO Docket No. 99-11, DA 99-430 (OCBO rel. Mar. 2, 1999) (*Overcoming Obstacles Proceeding: Arizona Hearing*).

³ See 47 U.S.C. § 214(e)(3), distinguishing rural areas by eliminating the mandatory requirement to designate multiple ETCs in areas served by rural telephone companies.

⁴ GRTI, along with three other tribal carriers, filed a petition for waiver of the Commission's Lifeline rules to allow carriers not subject to the jurisdiction of a state commission to receive the second tier of federal support where no regulations issued by local authorities exist that would prevent an equivalent reduction in the monthly telephone bills of qualifying low-income consumers. See Petitions for Waiver of Section 545.403(a) filed by Gila River Telecommunications, Inc. (January 22, 1999), Tohono O'odham Utility Authority (January 26, 1999), San Carlos Telecommunications, Inc. (February 12, 1999), and Fort Mojave Telecommunications, Inc. (February 17, 1999). The FCC, in the instant proceeding, proposes to modify its rules to state that an additional \$1.75 per qualifying low-income consumer will be

Jeopardizing the flow of funding without assurance as to the promotion of universal service goals is counter-productive.

Competition is in the public interest only where it results in reduced costs or improved service to consumers. Native American-owned companies were created to expand and promote economic opportunity on tribal lands; their purpose is to provide high-quality services at affordable rates, not to enhance market share or improve profits. The economic reality is that subjecting a tribal carrier such as GRTI to competition from large non-tribal wireline and wireless carriers will result in the tribal carrier falling short of recovering its costs of providing service. Furthermore, there are no assurances that would-be competitors are willing or able to replace tribal carriers by serving tribal lands ubiquitously.

With adequate USF funding, tribal telecommunications service providers will continue to fulfill their designated role: to improve the quality, variety, and cost of services, and increase subscribership among Native Americans. Advancement of tribal carriers' interests above non-tribal competitors on tribal lands also will promote the interests of Native Americans living on tribal lands by allowing their telecommunications dollars to remain within and serve the overall economy of the Reservation, in accordance with the rich tradition of tribal self-determination.

provided to the carrier where the additional support will result in an equivalent reduction in the monthly bill of each qualifying low-income consumer. The proposed revision would eliminate the need for carriers, like GRTI, that are not subject to the jurisdiction of a state commission to seek state commission action or commission waiver. *NPRM* at ¶ 69. GRTI support this proposal as well as the Commission's proposal to provide that the third tier of federal support, a maximum of \$1.75 per month per low-income consumer, is available to customers on tribal lands. *Id.* at ¶ 70.

II. The Principles of Tribal Sovereignty and Self-Determination Must Apply With Equal Force in Telecommunications.

The *NPRM* provides a succinct discussion of Indian law, including the federal/tribal trust relationship, tribal sovereignty, and tribal self-determination.⁵ The Commission cites the Constitutional recognition of the sovereign status of Indian tribes, and the recent Congressional declaration that the trust relationship “includes the protection of the sovereignty of each tribal government.”⁶ Congress has also demonstrated an overriding goal of encouraging tribal self-sufficiency and economic development.⁷ The Commission itself has concluded that the Communications Act of 1934, as amended (“the Act”), does not preempt tribal authority over access by telecommunications carriers to tribal lands, because the provisions of the Act that preempt state and local impediments to entry do not apply to tribal authorities.⁸

A. Tribal Regulation

In accordance with this framework, GRTI, together with the Gila River Tribal Council which governs GRTI’s provision of service on tribal lands, urges the Commission to establish a formal FCC - Indian policy for governing entry and the provision of telecommunications

⁵ *NPRM* at ¶¶ 33-37.

⁶ 25 U.S.C. § 3601.

⁷ *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-35 (1983).

⁸ AB Fillins: Petition for Declaratory Ruling Preempting the Authority of the Tohono O’odham Legislative Council to Regulate the Entry of Commercial Mobile Radio Service to the Sells Reservation Within the Tucson MSA, Market No. 77, *Memorandum Opinion and Order*, 12 FCC Rcd 11755 (1977).

services by non-tribal carriers on tribal lands.⁹ Such a policy should include a procedure pursuant to which the Commission will consult affected tribal authorities, and seek their consent or approval, prior to approving the entry of a new non-tribal carrier. These procedures will serve to protect tribes against encroachment of their sovereign powers and promote Indian culture and heritage, as well the economic and social welfare of Native Americans residing on tribal lands.¹⁰

Where a tribal authority seeks to designate its own tribal-owned and operated telecommunications service provider to serve tribal lands, no federal (or state) involvement is appropriate or necessary. To do so would interfere directly with tribal government within Indian jurisdictional boundaries. In every instance where a non-tribal entity seeks to serve tribal lands, however, principles of Indian law dictate that tribes be consulted and that each non-tribal telecommunications company providing service on tribal lands receive the official written approval of the duly authorized tribal authority. Without the formal involvement of tribal authorities in telecommunications provision on tribal lands, numerous aspects of tribal sovereignty and tribal economic welfare would be threatened.

⁹ Since 1970, Presidential policy has reaffirmed the unique sovereign status of Indian tribes, the tribal-federal trust relationship, and the federal obligation to promote tribal self-sufficiency. *NPRM* at ¶ 35, n. 80. For example, *President Clinton's April 1994 Memorandum* requires executive agencies to deal with Indian tribes on a government to government basis, carefully consider the implications of proposed actions on tribes and provides tribes with the opportunity to participate in agency activities. *Id.*

¹⁰ GRTI supports the Comments of the National Tribal Telecommunications Alliance ("NTTA") filed November 9, 1999, In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Notice of Proposed Rulemaking*, WT Docket No. 99-266, released August 18, 1999.

B. Tribal Self-Determination and Universal Service Goals

The principles of Indian law and federal support for tribal self-determination are entirely consistent with the Commission's statutory mandate to ensure that consumers in all regions of the nation have access to the services supported by federal universal service support mechanisms. Tribal leaders seek only to maintain their lawful jurisdictional status in authorizing tribal-owned entities to provide service, and to play a formal government-to-government role with the FCC with the entry of non-tribal carriers into Indian country. Indeed, GRTI's tribal authority shares the same universal service goals established by the Act. While GRTI seeks to promote the availability of telecommunications services, it nonetheless is concerned that competition among telecommunications providers -- on tribal lands where a tribal carrier exists -- will actually impede these universal service goals.

GRTI also supports the development of a procedure by which the Commission, the Joint Board, and the sovereign Indian tribes could determine in a flexible manner the appropriate mix of supported services, or identify a single alternative definition of the services supported by federal universal service support mechanisms in tribal lands. Tribal authorities are best suited to determine whether and how to prioritize basic telephone service over packages of services included in the definition of universal service with respect to their lands. Ultimately, allowing flexibility in determining those services to be supported in tribal lands will promote the achievement of the Commission's statutory universal service mandate in a manner consistent with tribal interests.

III. Conclusion

GRTI supports the implementation of policies which will further the availability of telecommunications services on tribal lands, but questions the validity of any assumption that suggests that a competitive marketplace model will ensure the ability to deploy the network necessary to provide advanced telecommunications services to sparsely-populated, low-income areas, such as the Gila River Reservation. Rather, the Commission should focus on ensuring the continuation of cost-recovery mechanisms to the tribal carriers that have demonstrated their commitment to universal service objectives for Native Americans.

Further, adherence to the principles of tribal sovereignty requires that tribal authorities be involved in the determination to allow the entry of non-tribal carriers in the provision of service to tribal lands. While not all Indian tribes may be interested in forming a tribally-owned telephone company, where that decision has been made, the goal of self-determination should be respected. GRTI urges the FCC to support tribes and tribal affiliates and organizations in their efforts to promote and enhance economic development within Indian reservations and to protect the sovereignty of Indian nations.

Respectfully submitted.

GILA RIVER TELECOMMUNICATIONS, INC.

By: Belinda Nelson *mon*
Belinda Nelson, General Manager

7605 West Allison Road, Box 5015
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December 17, 1999

Gila River Telecommunications, Inc.
Comments, CC Docket No. 96-45

December 17, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of Gila River Telecommunications, Inc." was served on this 17th day of December 1999, by hand delivery to the following parties:


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